SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2060-21
A-2283-21

ERIK C. DIMARCO,

Plaintiff-Appellant,

v.

ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF EDGEWATER and 575 RIVER ROAD, LLC,

Defendants-Respondents.

BOROUGH OF CLIFFSIDE PARK,

Plaintiff-Appellant,

v.

ZONING BOARD OF ADJUSTMENT OF THE BOROUGH OF EDGEWATER and 575 RIVER ROAD, LLC,

Defendants-Respondents.

SJ 660 LLC,

Plaintiff-Respondent,

v.

ZONING BOARD OF ADJUSTMENT
OF THE BOROUGH OF
EDGEWATER and 575 RIVER
ROAD, LLC,

Defendants-Respondents.

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Submitted May 9, 2023 – Decided June 9, 2023

Before Judges Sumners and Fisher.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket Nos. L-5916-21, L-6309-21, and L-6417-21.

Richard Malagiere, attorney for appellant Erik C. DiMarco in A-2060-21.

Price, Meese, Shulman & D'Arminio, PC, attorneys for appellant Borough of Cliffside Park in A-2283-21 (Jennifer M. Knarich, on the briefs).

Denise M. Travers, attorney for respondent Zoning Board of Adjustment of the Borough of Edgewater.

Beattie Padovano, LLC, attorneys for respondent 575 River Road Edgewater, LLC (Daniel L. Steinhagen, of counsel and on the brief).

PER CURIAM

In these appeals,[1] a property owner and a neighboring municipality challenge a zoning board of adjustment's decision to permit a developer to construct an approximately 225-foot high building, containing some retail but mostly residential units, in a commercial zone, which allows a maximum height of only twenty-five feet. We agree with the trial judge that the board did not act arbitrarily, capriciously, or unreasonably in granting the variances challenged, and affirm.

I

The property in question is 575 River Road in Edgewater, a 11.37 acre lot situated between the municipality's main thoroughfare – River Road – and the Hudson River, with a view to the east of the New York City skyline. The property lies in the B-3 Zone, which allows only commercial uses and a maximum building height of twenty-five feet. The property was last used as a golf driving range; it is currently vacant and in need of remediation. Its owner is defendant 575 River Road, LLC (hereafter "the property owner"). Plaintiff Erik DiMarco is the owner of a single-family home approximately two miles north of the

[1] These appeals were calendared back-to-back. We dispose of both by way of this opinion.

property; plaintiff Cliffside Park abuts Edgewater to the south and, like Edgewater, has eastern views of the New York City skyline.

In April 2019, the property owner applied to the zoning board of adjustment for multiple variances to allow for the construction of both residential units and retail space on the property. In December 2020, the property owner filed a new, bifurcated application, which first sought approval of the variances needed to build this complex, leaving site plan approval for a later time. Specifically, the new application sought: a use variance pursuant to N.J.S.A. 40:55D-70(d)(1); a floor-area-ratio (FAR) variance pursuant to N.J.S.A. 40:55D-70(d)(4); and a height variance pursuant to N.J.S.A. 40:55D-70(d)(6).

II

The board heard testimony and argument about this application over six nonconsecutive days that started in late January 2021 and ended in the middle of May 2021.[2] The property owner presented three experts. Harry Osborne, an architect, testified to the project's design and the overall layout; he also presented a viewshed analysis with respect to the New York City skyline and

[2] Cliffside Park appeared and objected to the application. The property owner initially argued that Cliffside Park lacked standing, but later withdrew this objection "in the interest of continuing" on with the hearings.

stated that any obstruction of the skyline as a result of the new building would be minimal. A second expert, Lou Luglio, testified to the traffic patterns that would result, claiming that the structure's layout would allow for safer traffic flow than a conforming, B-3 Zone use. A planning expert, Ken Ochab, testified that the project's construction was consistent with the municipality's 2014 Master Plan.

Cliffside Park presented three experts of its own. An engineer, Donald Norbut, presented his own viewshed analysis, asserting that the proposed building would block views of the New York City skyline from various points in Cliffside Park. He also attempted to rebut the property owner's assertion that the proposed building would be 225 feet tall, claiming that, when measured from sea level as opposed to the base of the building itself, the building would be 250 feet high. Cliffside Park's traffic engineering expert, Frank Seney, had his testimony largely disregarded by the Board after he admitted he had never personally visited Edgewater. Finally, Cliffside Park presented testimony from Massiel M. Ferrara, a planning expert, who ultimately recanted her testimony that the property was not suited for residential development, but still maintained that the proposed height of the building was inappropriate. DiMarco did not participate in the hearings.

On August 4, 2021, the board issued a resolution granting the application for all three variances. The board found the property was particularly suited for residential use and the construction of a high-rise residential complex would promote environmental cleanup, provide safer traffic conditions on River Road, and support existing commercial uses in the area. The board also noted that the proposed building would take advantage of the property's two frontages, would solve demand for rental housing in Edgewater, and, thanks to the Alexander[3] and the future residential complex to be located at 615 River Road, would not be inconsistent with the neighborhood. The board looked to the presence of these other two residential buildings to conclude that the proposed building would not pose any substantial detriments to the neighborhood or impair the purposes of the zoning plan. Finally, the board noted that the shape of the proposed residential building complied with the 2017 Master Plan, which aimed "to maintain easterly views by ensuring enough open space around buildings to allow for views from River Road."

[3] The Alexander is a luxury apartment complex located across the street from the property. The Alexander site was originally in the OR-1 Zone, which permits laboratories and administrative offices, not residential units. After use and density variances were granted to permit construction of the Alexander, the property was re-zoned to an R-5 residential district, which permits the construction of high-rise residential buildings; this was done in accordance with a recommendation set forth in Edgewater's 2014 Master Plan.

The board then addressed the property owner's request for a FAR variance, and held that Randolph Town Ctr. Assocs, L.P. v. Twp. of Randolph, 324 N.J. Super. 412, 417 (App. Div. 1999) controlled and demonstrated the board only needed to determine whether the property could accommodate potential problems associated with the increased density. In that regard, the board found that, because residential use would require less parking than a commercial use, the proposed design would actually solve any density problems. The board also found that the increased density would not have any impact on drainage at the site. DiMarco and Cliffside Park do not challenge this variance.

The board finally addressed the requested height variance, which, if granted, would allow the property owner to construct a building nine times taller than that currently permitted in this zone. The board stated that the applicable standard required consideration of whether the property would be able to accommodate any potential problems associated with the increased height, and whether a taller structure would be consistent with the neighborhood. Grasso v. Borough of Spring Lake Heights, 375 N.J. Super. 41, 53-54 (App. Div. 2004); see also Coventry Square, Inc. v. Westwood Zoning Bd. of Adj., 138 N.J. 285, 298-99 (1994). The board decided that the property could accommodate the increased height, and that the height would be consistent with other properties

such as the Alexander and the planned residential complex at 615 River Road.[4] The Board also took into consideration any viewshed obstruction from Cliffside Park, as required by Jacoby v. Englewood Cliffs Bd. of Adj., 442 N.J. Super. 450, 464-65 (App. Div. 2015), and found that any obstruction of Cliffside Park's view of the New York City skyline would be minimal.

III

Cliffside Park and DiMarco filed separate complaints in lieu of prerogative writs following the board's decision. They both sought reversal of the board's decision to grant the use and height variances; Cliffside Park also argued that the bifurcated application was inappropriate, and that the board members, particularly its chairman, made comments throughout the hearings indicative of bias. The trial judge ultimately determined that Cliffside Park lacked standing to challenge the board's decision since its interests were no different than those possessed by the general public. The judge also determined that even if Cliffside Park had standing to challenge the board's decision, the

[4] 615 River Road is about two-tenths of a mile north of the property and, like the property in question, borders the Hudson River. It was previously used for a Hess Oil and Chemical site and zoned as B-3, like the subject property. A redevelopment plan, which resulted from a settlement agreement between that property owner and Edgewater, allowed this area to be re-zoned as a residential district. This redevelopment plan was recommended in both the 2014 and 2017 Master Plans. Construction has not yet taken place.

board's reliance on relevant expert testimony precluded a finding that it acted arbitrarily, capriciously or unreasonably. The judge lastly determined that the board did not exhibit any bias towards Cliffside Park, and that the decision to bifurcate was well within its discretion.

Both Cliffside Park and DiMarco appeal. Cliffside Park reprises its three procedural arguments that the trial judge erred in concluding that it lacked standing, that the board was not biased, and that the bifurcation was improper. Turning to the merits, Cliffside Park and DiMarco both argue that the judge erred in concluding the board's approval of the use and height variances was not arbitrary, capricious or unreasonable, and in finding that the board's decision was based on sufficient evidence in the record. DiMarco expresses his arguments this way:

> I. THE TRIAL COURT ERRED IN AFFIRMING THE EDGEWATER ZONING BOARD'S FINDING THAT THE POSITIVE AND NEGATIVE CRITERIA REQUIRED FOR THE GRANT OF A USE VARIANCE HAD BEEN ESTABLISHED ON THE RECORD BELOW AND AS SUCH THE TRIAL COURT DECISION SHOULD BE REVERSED AND THE APPROVAL VACATED AS A MATTER OF LAW.
>
> II. THE TRIAL [COURT] ERRED AS A MATTER OF LAW IN AFFIRMING THE EDGEWATER ZONING BOARD IN ITS FAILURE TO PROPERLY RECONCILE THE OMISSION OF RESIDENTIAL

> USES FROM THE COMMERCIAL ZONE AS REQUIRED BY [MEDICI v. BPR CO., 107 N.J. 1 (1987)] IN GRANTING THE USE VARIANCE.
>
> III. THE TRIAL COURT ERRED IN AFFIRMING THE EDGEWATER ZONING BOARD'S ARBITRARY CAPRICIOUS AND UNREASONABLE RELIANCE ON INCOMPETENT EVIDENCE IN THE ZONING BOARD'S CONCLUSION THAT THE PROPERTY MET THE PARTICULARLY SUITED REQUIREMENT OF [MEDICI, 107 N.J. 1] AS A MATTER OF LAW AND AS SUCH THE TRIAL COURT DECISION SHOULD BE REVERSED AND THE RESOLUTION OF APPROVAL VACATED.
>
> IV. THE TRIAL COURT ERRED IN AFFIRMING THE EDGEWATER ZONING BOARD'S GRANT OF THE USE VARIANCE BECAUSE IT CONSTITUTES ZONING BY ORDINANCE AND AS SUCH USURPS THE PROVINCE AND RESPONSIBILITY OF THE MAYOR AND COUNSEL IN ESTABLISHING ZONE CODE REGULATIONS IN THE BOROUGH OF EDGEWATER AND SHOULD BE REVERSED.

We first consider Cliffside Park's procedural arguments and then its and DiMarco's arguments about the merits.

IV

We review de novo Cliffside Park's argument that it had standing to be heard on the property owner's application. Cherokee LCP Land, LLC v. City of Linden Plan. Bd., 234 N.J. 403, 414 (2018). To find standing, we must be satisfied that Cliffside Park had "a sufficient stake and real adverseness with

respect to the subject matter of the litigation [and a] substantial likelihood of some harm . . . in the event of an unfavorable decision." Campus Assocs. LLC v. Zoning Bd. of Adj. of Twp. of Hillsborough, 413 N.J. Super. 527, 533 (App. Div. 2010). The Municipal Land Use Law, N.J.S.A. 40:55D-1 to -163 (MLUL), describes the "sufficient stake and real adverseness" requirements by requiring that, beyond "establishing its 'right to use, acquire, or enjoy property,' a party must establish that the right 'is or may be affected.'" Cherokee, 234 N.J. at 416-17 (quoting N.J.S.A. 40:55D-4 definition for "interested party"). It is not necessary that the party "resid[es] within or without the municipality." N.J.S.A. 40:55D-4.

Cliffside Park argues that the property owner waived the contention that it lacks standing when it withdrew its objection and did not stand in the way of Cliffside Park's presentation of its experts at the board hearings. Cliffside Park further argues that even if the issue was not waived, it had standing because of the proposed building's potential effect on its viewshed: "where a structure substantially exceeds the local height restriction . . . a zoning board is obligated to consider the impact that the structure would have on more than the municipality itself or the immediate vicinity of the structure." Jacoby, 442 N.J. Super. at 458. Cliffside Park maintains that, because such a tall building on the

property would affect its residents' views of New York City, it had standing to challenge the variances that would permit construction of the building.

The property owner, on the other hand, argues that the MLUL's legislative history reveals that an interested party must show "special damages" distinct from those suffered by the general public to have standing before a zoning board, see Rose v. Chaikin, 187 N.J. Super. 210, 221-22 (Ch. Div. 1982), something Cliffside Park cannot show. The property owner also argues that Cliffside Park does not have third-party standing to represent its residents' interests even if the residents themselves have standing to challenge an obstruction of their views of New York City. See Bondi v. Citigroup, Inc., 423 N.J. Super. 377, 436 (App. Div. 2011).

We agree Cliffside Park had standing, regardless of the property owner's withdrawal of its objection when the matter was pending before the board. The legislative history of the phrase "interested party" demonstrates that a challenger "must show merely that he has been denied the reciprocal benefits of a common zoning plan . . . an interested party, at most, must show the equivalent of what was traditionally described as 'special damages.'" Rose, 187 N.J. Super. at 221 (emphasis added). The statute also clearly provides that an interested party need only be someone "whose rights to use, acquire, or enjoy property" have been

affected. N.J.S.A. 40:55D-4. Cliffside Park established enough adverseness to have standing to challenge the application and the resolution granting it.

V

Cliffside Park argues in this appeal that the board erred in bifurcating the property owner's applications. We disagree. Zoning boards are permitted to hear bifurcated applications for variances and site plans and often do so when a project cannot move forward without variance approval. COX & KOENIG, NEW JERSEY ZONING & LAND USE ADMINISTRATION § 17-9 (2022). These bifurcated applications benefit applicants who would otherwise spend large amounts of money on site plans that may never even be approved. Ibid.

According to Cliffside Park, the board's only justification for hearing the bifurcated application was because it has heard bifurcated applications in the past. Although zoning boards have the authority to hear bifurcated applications under N.J.S.A. 40:55D-76(b), they should not hear such applications when the request for variances and site plan approval are highly interrelated. House of Fire Christian Church v. Bd. of Adj. of City of Clifton, 379 N.J. Super. 526, 539-40 (App. Div. 2005). Bifurcation may not be appropriate when "factors such as traffic flow, traffic congestion, ingress and egress, building orientation, and the nature of the surrounding properties are highly relevant to both the

determination of whether to grant a use variance and the later decision to approve the site plan." Id. at 540. Cliffside Park notes that safer traffic patterns presumably played a large role in convincing the board to approve the variances and will likely play a large role in the board's eventual approval of the site plan. Therefore, the application should not have been bifurcated. The property owner acknowledges bifurcation is inappropriate when the variances sought are highly interrelated with a later request for site plan approval, but claims there is no such obstacle presented here.

In any event, it is clear that the discretion to decide whether "the use variance and site plan issues [are] so interrelated that both applications should be considered in a single administrative proceeding" rests with the board. House of Fire, 379 N.J. Super. at 540 (citing Meridian Quality Care, Inc. v. Bd. of Adj. of Twp. of Wall, 355 N.J. Super. 328, 340 (App. Div. 2002)). Considering the efficiency and cost saving promoted by bifurcation in many cases, like this one, we find no abuse of discretion in the board's decision to allow bifurcation.

VI

Cliffside Park claims that the board, and specifically its chairman, made several negative comments towards Cliffside Park indicative of bias. One example appears in the following discussion:

> Chairman []: So my understanding is that [the proposed building] is going to block your view?
>
> [Cliffside Park's counsel]: Yeah. Primarily that is the significant issue.
>
> Chairman []: That's the same view that was blocked by the townhouses and the houses and the high-rises that were built up at Cliffside [Park] that blocks our sun.
>
> [Cliffside Park's counsel]: I'm not sure what you mean by – about that, but I understand.
>
> Chairman []: Well, if you look up from Edgewater to Cliffside [Park], you see the high-rises up there. The sun goes down awful quicker on our end, but we didn't complain.

The chairman also expressed his feelings about the impact of the project on Cliffside Park's viewshed: "I don't care. I don't live in Cliffside [Park], I live in Edgewater." And, on multiple occasions, the chairman complained about the amount of time that Cliffside Park's counsel spent presenting his client's arguments against the variances.

To upset the board's resolution, Cliffside Park was required to show impermissible bias that led to a prejudgment of the matter. See Wollen v. Borough of Fort Lee, 27 N.J. 408, 421 (1958); see also Sugarman v. Teaneck Planning Bd., 272 N.J. Super. 162, 171 (App. Div. 1994). We are satisfied that the chairman's comments, although suggestive of some intolerance toward the

alleged harm caused by the project on those outside his municipality or merely suggestive of the expenditure of time to hear Cliffside Park's complaints, and putting aside Cliffside Park's failure to raise this matter to the board, we reject the argument that the board or any of its members acted with impermissible bias.

VII

A

Both Cliffside Park and DiMarco argue that the board's resolution was arbitrary, capricious, unreasonable, and unsupported by sufficient evidence. We disagree.

The standard for reviewing a zoning board's decision to grant a variance is very generous; the reviewing court need only determine whether the zoning board's decision was supported by the record, as established during the hearings, and was not arbitrary, capricious, or unreasonable. J.D. Constr. Corp. v. Isaacs, 51 N.J. 263, 270 (1968); Kramer v. Bd. of Adj. of Sea Girt, 45 N.J. 268, 296 (1965); Cohen v. Bd. of Adj. of Borough of Rumson, 396 N.J. Super. 608, 615 (App. Div. 2007). The reviewing court may not substitute its own independent judgment for that of the zoning board; review is limited to "whether the board could reasonably have reached its decision." Davis Enters. v. Karpf, 105 N.J. 476, 485 (1987); Cummins v. Bd. of Adj. of Borough of Leonia, 39 N.J. Super.

452, 460 (App. Div. 1956). Courts, however, generally show less deference towards grants than denials of use variances. Saddle Brook Realty, LLC v. Saddle Brook Zoning Bd. of Adj., 388 N.J. Super. 67, 75 (App. Div. 2006). "Variances to allow new nonconforming uses should be granted only sparingly and with great caution since they tend to impair sound zoning." Kohl v. Fair Lawn, 50 N.J. 268, 275 (1967); see also Burbridge v. Mine Hill, 117 N.J. 376, 385 (1990).

B

Cliffside Park primarily challenges the height variance, claiming the proposed high-rise building will block its residents' views of the New York City skyline. Cliffside Park emphasizes N.J.S.A. 40:55D-70(d)(6), which allows variances for structures that exceed the maximum height permitted in the relevant zone "by 10 feet or 10% the maximum height," provided that: (1) the applicant can show special reasons for the increased height, and (2) the increased height will not cause "substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance." Grasso, 375 N.J. Super. at 48-49. These two requirements are often referred to as the positive criteria and the negative criteria, respectively. Ibid. When seeking a height variance to build a structure exceeding the limit set by

N.J.S.A. 40:55D-70(d)(6), the applicant "must [also] show [hardship, or] that the property for which the variance is sought cannot reasonably accommodate a structure that conforms to, or only slightly exceeds, the height permitted by the ordinance." Id. at 51. And a board must address the extent to which the building's height will affect viewsheds from nearby municipalities, required by Jacoby.

Cliffside Park argues that the grant of the height variance amounted to an impermissible rezoning of the property. See Price v. Strategic Capital, 404 N.J. Super. 295, 303 (App. Div. 2008). This argument is buoyed by the fact that the property owner's application significantly focuses on the fact that had the property been located in a R-5 residential zone, the project would have met all that zone's requirements and that Ochab, one of the property owner's experts, expressed his view during the hearings that the property should be rezoned.

Cliffside Park also argues that the property owner failed to explain why a conforming height, or one that only slightly exceeded 25 feet, could not be built. In responding to this issue, the board focused on the special reasons for the variance and the impact the building's height would have on the neighborhood.

Finally, Cliffside Park argues that the board failed to properly consider the effect the proposed structure would have on the viewshed. Grasso provides some support for this argument, recognizing that the purpose of height limits is not

just to preserve views, but to preserve the character of the neighborhood as well. See 375 N.J. Super. at 54. In Jacoby, for example, we reversed the grant of a height variance to an office building that would have been four times the height permitted in the applicable zone, specifically because the zoning board failed to address the effect the building would have on "sweeping views" of the Palisades Cliffs, as well as on views of New York City from other municipalities. 442 N.J. Super. at 469. Cliffside Park claims that the board similarly failed to conduct "any meaningful analysis" of the impact of the proposed height, and that "there was absolutely no analysis on the part of the [b]oard detailing any alternative plan that actually complied with ordinance limits."

Although Cliffside Park places a great deal of emphasis on the proposed structure being 250 feet rather than 225 feet, as asserted by the property owner, we find this factual discrepancy to have no material significance to the legal questions posed. Regardless of which height is correct, we are considering a proposed structure nine or ten times taller than what is currently permitted in the zone.

In responding to these arguments, the property owner claims it sufficiently showed special reasons for the variance, and that the purpose of the height limit in the B-3 Zone is to control traffic patterns associated with lower, wider

commercial buildings. And, because the proposed building is residential, the concerns raised by Cliffside Park and DiMarco do not provide a material challenge to the height variance. The property owner relies on the fact that the height of the Alexander and the future residential complex at 615 River Road are examples of why a taller building would not generate an inconsistency in this neighborhood. The property owner argues that the board satisfied Jacoby by concluding that any viewshed impacts on properties in this neighborhood or, for that matter, in Cliffside Park, would be insubstantial, especially considering other tall structures in Edgewater that do not substantially impair the view. The board's disposition largely agrees with the property owner's approach in this regard.

The main thrust of Cliffside Park's argument can be found in its heavy reliance on the fact that the height variance approved by the board considerably exceeds the zone's height limitation, as well as what Grasso held. But all things are relative. We considered in Grasso a height variance sought by a party seeking to build a large house in a neighborhood of smaller houses. What the property owner seeks here is to build a far taller building than is permitted, but in an area where there is one, and soon to be two, other similarly large structures. Consequently, when viewed in the overall scheme, the proposed structure,

despite its considerable height, will not necessarily give the appearance of disharmony or overcrowding that concerned us in Grasso, 375 N.J. Super. at 53. Moreover, as the board recognized, the particular structure in question – a tall, thin residential structure – ensures enough open space to allow for views from western vantage points.

In short, the board found many reasons why this particular improvement to the property provided a benefit to Edgewater's residents. This environmentally-damaged property would be remediated. Out of concern for the location of the projected driveway to the premises, the driveway was moved to as to better ensure traffic safety. The board also recognized that traffic in and out of a residential property would provide less of an impact than if the property was commercially developed; indeed, the existence of a residential use of the property would enhance existing commercial properties in the zone. In addition, the project would stand in close proximity to other similar high-rise structures, like the Alexander and the project on 615 River Road. And the board recognized the significant demand for rental housing in the municipality that this project would address.

For similar reasons, the board found that the property owner met the negative criteria. The board further concluded that the intent and purposes of the

master plan and the zoning ordinances would not be substantially impaired. In this regard, the board recognized that the character of the neighborhood in the immediate vicinity of the property is very different than the zone in which this property is found. See Medici, 107 N.J. at 21 n.11.

We are satisfied that the board balanced the positive and negative criteria in a sensible way and that its conclusion is not arbitrary, capricious or unreasonable.

C

We also find no merit in DiMarco's arguments, to the extent we have not already addressed them in the foregoing section of this opinion. DiMarco largely focuses on the use variance, claiming the variance essentially rezoned the property.

To obtain a use variance, an applicant must satisfy the principles enunciated in Medici, 107 N.J. at 21, which requires, similar to the request for a height variance, a showing of special reasons for the variance (positive criteria) as well as a showing that the variance sought is not inconsistent with the intent and purpose of the master plan and zoning ordinance (negative criteria).

As we have said about the height variance, the Medici Court recognized that "proof that the character of a community has changed substantially since the adoption of the master plan and zoning ordinance may demonstrate that a variance for a use omitted from the ordinance is not incompatible with the intent and purpose of the governing body when the ordinance was passed." Ibid. DiMarco argues that the community has not sufficiently changed since the adoption of the last Master Plan in 2017. He argues there are contrasts between the property in question, on the one hand, and the Alexander and 615 River Road, on the other. The Alexander, DiMarco argues, "was approved for construction prior to the adoption of the 2014 Master Plan Amendment and that plan recommended a zone change [for that location] from OR-1 to high rise, [residential] use." Similarly, 615 River Road was recommended for redevelopment in both the 2014 and 2017 Master Plans. These properties, DiMarco claims, are not "changes since the adoption of the master plan" and cannot be relied upon to justify the granting of a use variance for this property.

Second, as the Medici Court stated, reconciliation on the basis of a substantial change in the community "becomes increasingly difficult when the governing body is made aware of prior applications for that same use variance but has declined to revise the zoning ordinance." 107 N.J. at 21-22. The

redevelopment of both the Alexander and 615 River Road were accounted for in the latest master plan while no zoning change was made or proposed for this property. DiMarco claims this is evidence of an intent on the part of the mayor and council to have the property remain in a commercial zone.

And, finally, DiMarco takes issue with the board, in granting the use variance, relying on a statement from the 2017 Master Plan that recommended the construction of taller, narrower buildings to preserve views of New York City from River Road. The master plan's recommendation of taller, narrower structures in residential zones does not, according to DiMarco, change the fact that the property in question is not in a residential zone.

We reject DiMarco's argument because it promotes an inflexibility not supported by our jurisprudence. Indeed, Medici, on which DiMarco greatly relies, recognizes that substantial changes in the community should not be overlooked in such matters, and the record reveals considerable changes in the neighborhood, even though they may have preceded the last examination of the master plan. That the zoning of this particular property may have been excluded from the review of the master plan does not preclude the possibility, as Medici observed, that the exclusion was not deliberate but merely inadvertent. 107 N.J. at 21 n.11. We thus reject DiMarco's usurpation argument.

VIII

To the extent we have not specifically addressed any of Cliffside Park's or DiMarco's remaining arguments, it is because we find they have insufficient merit to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION